

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:12-cv-133-RJC**

DENNIS ROGER VANDYKE,

Plaintiff,

v.

CHRIS FRANCIS, et al.,

Defendants.

)
)
)
)
)
)
)
)
)
)
)

ORDER

THIS MATTER is before the Court on a review of Plaintiff's Application to Proceed Without Prepayment of Fees or Costs, (Doc. No. 1-1), and a review of Plaintiff's Complaint, filed under 42 U.S.C. § 1983. (Doc. No. 1). See 28 U.S.C. §§ 1915; 1915A.

Plaintiff is currently a prisoner incarcerated in the Rutherford County Jail. The Court notes that Plaintiff is a frequent, if not record, filer of pro se lawsuits in this district. A review of Plaintiff's history within this district reveals he has filed no less than fifteen (15) complaints under Section 1983, and fifteen applications to proceed *in forma pauperis*. In an Order dated August 1, 2006, the Honorable Graham C. Mullen provided an overview of Plaintiff's allegations in eight (8) of these complaints and made the following findings in an Order granting defendants' motion for summary judgment:

On June 21, 2006 alone, Plaintiff filed five separate Complaints requiring this Court's time and resources. All five of those Complaints were dismissed on initial review for failure to state a claim for relief, frivolousness, or failure to file in the proper district. Plaintiff's frequent filings are abusive in that they each require significant time and attention from the Court's legal staff that could be better served on cases that state legitimate constitutional violations. Plaintiff is put on notice that because he has had at least three cases dismissed, in this district alone, as frivolous or for failure to state a claim upon which relief may be granted, he may not file future civil actions or appeal a judgment in a civil proceeding under 28 U.S.C. § 1915 in any federal district unless he is

under imminent danger of serious physical injury. 28 U.S.C. § 1915(g). (1:05-cv-357, Doc. No. 31 at 2-4). Plaintiff appealed the Court's Order granting summary judgment to the United States Court of Appeals for the Fourth Circuit and the Court affirmed summary judgment for the reasons stated in Judge Mullen's Order. Vandyke v. Officer O'Donnell et al., No. 06-7454 (4th Cir. filed Mar. 27, 2007). (Doc. No. 39).

Since May 17, 2012, Plaintiff has filed eight (8) complaints in this district under Section 1983, and eight (8) applications to proceed *in forma pauperis*. One of the complaints has already been dismissed for failure to state a claim for relief under 28 U.S.C. § 1915A(b)(1). (1:12-cv-113-RJC, Doc. No. 6 at 7). Each of the Complaints state similar allegations against various state actors and other individuals who are not amenable to suit in a Section 1983 action. See (Case Nos. 1:12-cv-114; 1:12-cv-127; 1:12-cv-128; 1:12-cv-129; 1:12-cv-130; 1:12-cv-131; 1:12-cv-132; 1:12-cv-133).

The provisions of 28 U.S.C. § 1915 are mandatory and define the degree and scope of this Court's initial review of Plaintiff's Complaint. See Crawford-El v. Britton, 523 U.S. 574, 596 (1998) (discussing the Prisoner Litigation Reform Act ("PLRA")). Section 1915(g) provides that:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.


Plaintiff has had more than three of his previous Complaints dismissed for failure to state a claim and for being frivolous. The Court has examined Plaintiff's Complaint and finds that Plaintiff's Complaint has failed to demonstrate that he "is under imminent danger of serious injury" as

required by § 1915(g) of the PLRA. Plaintiff's Application to Proceed *in forma pauperis*, (Doc. No. 1-1), must therefore be denied, and his Complaint, (Doc. No. 1), dismissed. 28 U.S.C. § 1915(g).

IT IS, THEREFORE, ORDERED that Plaintiff's Application to Proceed *in forma pauperis*, (Doc. No. 1-1), is **DENIED**. 28 U.S.C. § 1915(g).

IT IS FURTHER ORDERED that Plaintiff's Complaint, (Doc. No. 1), is **DISMISSED**.

Signed: June 25, 2012


Robert J. Conrad, Jr.
Chief United States District Judge

